

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DARREN L. ROBINSON,

Petitioner,

v.

CIVIL ACTION NO. 5:09-cv-1324
(Criminal No. 5:07-cr-00012)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Petitioner Darren L. Robinson, *pro se*, (“Petitioner”) brings this action for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 [Docket 80]. On December 9, 2009, this Court referred Petitioner’s motion to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings of fact and a recommendation (“PF&R”) pursuant to 28 U.S.C. § 636(b)(1)(b) [Docket 83].

In his request for post-conviction relief, Petitioner asserts claims of ineffective assistance of counsel both at the trial court and appellate level. On July 20, 2012, Magistrate Judge VanDervort issued a PF&R recommending the dismissal of Petitioner’s motion because it fails to state a meritorious claim of ineffective assistance of counsel [Docket 88].

The Court is not required to review, *de novo* or by any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner’s right

to appeal this Court's Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due on August 6, 2012, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.


Accordingly, the Court hereby **ADOPTS** the PF&R, **DENIES** Petitioner's motion [Docket 80], and **DIRECTS** the Clerk to remove this action from the Court's active docket.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Pursuant to Rule 11(a), Petitioner may not appeal the District Court's denial of a certificate of appealability, but he may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

The Clerk is further directed to provide a copy of this Order to all counsel of record, the petitioner, *pro se*, and Magistrate Judge VanDervort.

IT IS SO ORDERED.

ENTER: November 9, 2012



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE